

20, 22-25, 27-34, and 37 as allegedly unpatentable under 35 U.S.C. §103 over Arai (U.S. Patent 6,243,656). Claims 10, 11, 35, and 36 were rejected as allegedly unpatentable under 35 U.S.C. §103 over Arai in view of Longaker (U.S. Patent 6,226,601). Claims 2, 21, and 26 were rejected as allegedly unpatentable under 35 U.S.C. §103 over Arai in view of a data sheet for the STLC60134.

§103 Rejections of Claims 1, 3-9, 12-20, 22-25, 27-34, and 37 over Arai

Claims 1, 3-9, 12-20, 22-25, 27-34, and 37 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Arai. According to the Manual of Patent Examining Procedure (M.P.E.P.),

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.¹

Rejection of Claim 1

Claim 1 recites a method for throttling the rate set of data. The method, as described, describes monitoring the temperature of a *communication device* as the communication device *transmits data to a second communication device*. When the

¹ M.P.E.P. § 2143.

temperature of the communication exceeds an acceptable temperature, the rate set of the data is throttled. (Emphasis added.)

In the Office Action, it is asserted that Arai discloses a method of controlling the speed of data in a communication device. In fact, Arai describes a method for regulating the speed at which a central processing unit (CPU) runs.

In the Office Action, it is asserted that Arai does not disclose the communication device as a wireless modem. Applicants strongly object to the portrayal of a CPU as a “communication device.” Applicants agree with the Office Action insofar as it states that the wireless modem is not described. However, Applicants further assert that not even a communication device is described or even suggested.

Arai does not mention the use of any *communication device* of any sort. Arai does mention the clocking of a CPU as it works within the confines of the boxed computer. However, the CPU is simply not a communication device.

Applicants respectfully request that the Examiner show any communication device in the cited art. A reading of Arai does not show the Applicants any device that is used as a *communication device*. The Examiner has engaged in an impermissible reading of the claimed matter in transforming the communication device to the CPU.

Additionally, Claim 1 describes the monitoring of the temperature during *communication to a second communication device*. Let alone that a CPU is not a communication device, there is absolutely no mention in Arai of the single system being in communication with a second device.

Thus, Arai in no way, shape, or form describes monitoring the temperature of a *communication device* as the communication device *transmits data to a second communication device*, and throttling the rate set of data when the temperature of the communication exceeds an acceptable temperature. Nor does it suggest the inclusion of a communication device. As such, a prima facie case of obviousness has not been made, and the rejection of Claim 1 is respectfully traversed for this reason, among others.

Rejection of Claim 15

Claim 15 is directed to a rate set throttler for a communication device. The rate set throttler communicates with a second communication device, and shares many of the characteristics of Claim 1. Arai does not show or suggest these portions, among others. For many of the same reasons as stated above in relation to Claim 1, as well as others, the rejection of Claim 15 under Arai is respectfully traversed.

Rejection of Claim 25

Claim 25 is directed to a method for regulating temperature increase of a communication device. The method describes the how first communication device communicates with a second communication device, and shares many of the characteristics of Claims 1 and 15. Arai does not show or suggest these portions, among others. For many of the same reasons as stated above in relation to Claim 1 and 15, as well as others, the rejection of Claim 25 under Arai is respectfully traversed.

Rejection of Claims 3-9, 12-14, 16-20, 22-24, 27-34, and 37

Claims 3-9, 12-14, 16-20, 22-24, 27-34, and 37 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Arai. According to the Manual of Patent Examining Procedure (M.P.E.P.). Claims 3-9 and 12-14 depend from Claim 1. Claims 16-20 and 22-24 depend from Claim 15. Claims 27-34 and 37 depend from Claim 25.

First, since the respective base claims are allowable in light of Arai, it is asserted that these claims are also allowable for the reasons asserted relative to the respective base claims, among others. Second, many of the claims contain additional portions that are not found in or suggested by Arai independently of the reliance on the base claims.

For example, Claims 3, and 4 describe the rate set as 14.4 kilobits/sec. And 9.6 kilobits per second. Applicants request that the Examiner provide an objective basis for the inclusion of these portions into Arai.

This is required by *In re Lee*, (Fed. Cir. 2002), stating that a motivation to combine references “must be based on objective evidence of record” (emphasis added). Mere recitations of subjective beliefs is not proper to support such a combination.

Claims 5, 17, and 28 mention reducing a duty cycle by half. Applicants insist from where in Arai this portion is gleaned from.

Claim 30 delineates the duty cycle in the range of 20 milliseconds to about 40 milliseconds. Again, Applicants insist from where in Arai this time frame is gleaned from.

Claims 7, 19, and 31 mention reducing the output power by half. Claims 8, 20, and 32 further delineate the power consumed as the device *transmits data to the second*

communication device. Again, Applicants insist from where in Arai these portions are gleaned from.

Claim 33 delineates this power in the range of about 3 watts to about 4 watts. Applicants again request specifically those portions of Arai that describe or suggest this range.

Claims 9 and 22 describe the communication as a wireless modem. Claim 34 describes the communication as wireless. Again, Applicants ask where in Arai a wireless communication device is described or suggested, let alone *any* communication device that communicates with a second communication device.

Claims 12, 23, and 27 describe the situation where the communication is maintained between the first and second devices. Applicants respectfully ask the Examiner from where in Arai this continuous communication between a first device and a second device is described or suggested, let alone where the first or second communication device is or is suggested by Arai.

As can be shown, the rejections of the various dependent claims contain many deficiencies for showing a prima facie case of obviousness. As such, Applicants respectfully traverse all the rejections of Claims 3-9, 12-14, 16-20, 22-24, 27-34, and 37.

§103 Rejections of Claims 10, 11, 35, and 36 over Arai in vie of Longaker

First, the rejections of Claim 10, 11, 35, and 36 suffer many of the deficiencies noted above with respect to the arguments in relation to Claims 1 and 25. Longaker does not mention nor does it suggest those portions that Arai is deficient in addressing.

In the Office Action, it is asserted that it would have been obvious to combine Longaker with Arai. This, in fact, is the crux of the problem with the entire set of rejections.

To combine the CDMA and TDMA technologies in conjunction with a microprocessor is not obvious. Thus, in addition to the material shortcomings in the base claims that are not addressed in Arai, there is absolutely no impetus to combine these references as stated.

For these reasons, among others, Applicants respectfully traverse the rejections of 10, 11, 35, and 36. Applicants assert that Claims 10, 11, 35, and 36 are, in fact allowable, and ask the Examiner for issuance of a paper to that effect.

§103 Rejections of Claims 2, 21, and 26 over Arai in view of STLC60134

Again, the rejections of Claim 2, 21, and 26 suffer many of the deficiencies noted above with respect to the arguments in relation to Claims 1, 15, and 25. The trade document does not mention nor does it suggest those portions that Arai is deficient in addressing.

In the Office Action, it is asserted that it would have been obvious to combine the document with Arai. In a manner substantially similar to that asserted above in relation to Claims 10, 11, 35, and 36, to combine the cited ADSL criteria in conjunction with a microprocessor is not obvious. Thus, in addition to the material shortcomings in the base claims that are not addressed in Arai, there is absolutely no impetus to combine these references as stated.


For these reasons, among others, Applicants respectfully traverse the rejections of 2, 21, and 26. Applicants assert that Claims 2, 21, and 26 are, in fact allowable, and ask the Examiner for issuance of a paper to that effect.

Conclusion

It is believed that this response places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,
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